



**CITY OF LODI
COUNCIL COMMUNICATION**

TM

AGENDA TITLE: Adopt Resolution Supporting Legislation Amending the Americans with Disabilities Act (ADA) to Require Notice Prior to Filing Legal Action

MEETING DATE: February 2, 2005 City Council Meeting

PREPARED BY: Steve Schwabauer, City Attorney

RECOMMENDED ACTION: That the City Council adopt Resolution supporting Legislation amending the Americans with Disabilities Act to require notice prior to filing legal action

BACKGROUND INFORMATION: The City of Morro Bay has been involved in litigation since 2002 for alleged violations of the Americans with Disabilities Act (ADA) and State Access laws and has requested our support of legislation amending the ADA. Morro Bay quickly settled a portion of the lawsuit by agreeing to spend \$75,000 on ADA improvements over the next five years. The City was unable to settle the portion of the lawsuit dealing with attorneys' fees as plaintiffs attorneys demanded \$200,000. The Court recently reduced the amount of the attorneys' fees to \$54,000 and the plaintiff's attorney has now appealed the decision.

In 2004, litigation was filed against 16 locally owned and operated restaurants in Morro Bay for alleged ADA violations, with all of the lawsuits being identical having been filed by the same plaintiff and attorney. The lawsuits have caused a tremendous impact on the community, causing two of the restaurants to close their doors due to their financial inability to fight the allegations. Lodi businesses have seen their own actions including Michael David Vineyards.

The 14-year old Americans with Disabilities Act is a good law, but unfortunately, the intent and spirit of the ADA of 1990 is being abused, People are filing lawsuits for minor technical access violations without giving small business owners an opportunity to remedy the alleged violations. Fearing the time, hassle and expense of lawsuits, small businesses are being forced into cash settlements.

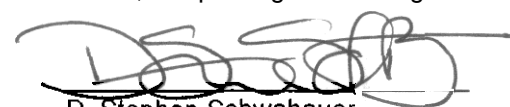
Congressman Mark Foley (R-FL) introduced ADA Notification Act (H.R. 728) which amends the American with Disabilities Act of 1990 to deny jurisdiction to a court in a civil action for remedies unless the complainant has implemented specified notification procedures that include opportunity for correction of the alleged violation. Assemblyman Tim Leslie (Tahoe City) introduced similar legislation, AB **2594** Public Accommodations: Persons with Disabilities to allow a person who hires an ADA specialist to review the design and construction of the person's premises to have a Certificate of ADA Compliance. Holders of such a certificate would be entitled to notice and the opportunity to correct future ADA violations before a civil lawsuit could be filed.

The above-mentioned legislation would curtail the abusive practice of certain people filing lawsuits for easily correctable ADA infractions and would enable small businesses to work with the disabled community to correct minor violations and improve accessibility for the disabled. In essence, the passage of this legislation would tip the balance back to accessibility.

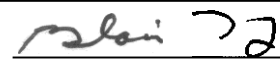
FUNDING: Not applicable

Approved:


Jim Krueger, Finance Director


D. Stephen Schwabauer
City Attorney

APPROVED:


Blair King, City Manager

RESOLUTION NO. 2005-23

A RESOLUTION OF THE LODI CITY COUNCIL SUPPORTING
LEGISLATION AMENDING THE AMERICANS WITH
DISABILITIES ACT TO REQUIRE NOTICE PRIOR TO FILING
LEGAL ACTION

WHEREAS, the Americans with Disabilities Act gives civil rights protection to individuals with disabilities similar to those provided to individuals on the basis of race, color, **sex**, national origin, age, and religion; and

WHEREAS, the Americans with Disabilities Act guarantees equal opportunity for individuals with disabilities in public accommodations, employment, transportation, state and local government services, and telecommunications; and

WHEREAS, the City of Lodi supports the goals of this landmark civil rights law and the original intent of the Americans with Disabilities Act because it provides equal access opportunities for all Americans; and

WHEREAS, since the enactment of the Americans with Disabilities Act, many abuses have been perpetrated against property owners by a few unscrupulous attorneys seeking to wage economic retribution upon property owners using the guise of a well-intentioned civil rights law. Unfortunately, it is not the goal of these few attorneys to improve accessibility for the disabled, but to exact financial punishment through lawsuits; and

WHEREAS, legislation has been introduced by California State Assemblyman Tim Leslie (AB 2594) and by U. S. Congressman Mark Foley (H.R. 728) that would amend the Americans with Disabilities Act to require, as a precondition to commencing a civil action with respect to a place of public accommodation or commercial facility, that an opportunity be provided to correct alleged violations.

NOW, THEREFORE, BE IT RESOLVED that the Lodi City Council hereby supports the adoption of legislation that would require notice prior to filing legal action for violations of the Americans with Disabilities Act since it would curtail the abusive practice of certain attorneys by providing a due process provision for property owners so that they may be in full compliance with the Act; and

BE IT FURTHER RESOLVED that, upon passage, the ~~C~~ *i* Clerk shall deliver this Resolution to the League of California Cities, Central Valley Cities, the Governor's office, and to the California and Federal Legislative Delegation.

Dated February 2, 2005

I hereby certify that Resolution No. 2005-23 was passed and adopted by the City Council of the City of Lodi in a regular meeting held February 2, 2005, by the following vote:

AYES: COUNCIL MEMBERS – Hansen, Hitchcock, Johnson, Mounce, and
Mayor Beckman

NOES: COUNCIL MEMBERS – None

ABSENT: COUNCIL MEMBERS – None

ABSTAIN: COUNCIL MEMBERS – None



SUSAN J. BLACKSTON
City Clerk



DECLARATION OF MAILING

TRANSMITTAL LETTER AND RESOLUTION SUPPORTING LEGISLATION AMENDING THE AMERICANS WITH DISABILITIES ACT TO REQUIRE NOTICE PRIOR TO FILING LEGAL ACTION

On February 3, 2005, in the City of Lodi, San Joaquin County, California, I deposited in the United States mail, envelopes with first-class postage prepaid thereon, containing a transmittal letter and resolution supporting legislation amending the Americans with Disabilities Act to require notice prior to filing legal action, marked Exhibit "A"; said envelopes were addressed as is more particularly shown on Exhibit "B" attached hereto.

There is a regular daily communication by mail between the City of Lodi, California, and the places to which said envelopes were addressed.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 3, 2005, at Lodi, California.

ORDERED BY:

SUSAN BLACKSTON
CITY CLERK, CITY OF LODI

ORDERED BY:

JACQUELINE L. TAYLOR
DEPUTY CITY CLERK

JENNIFER M. PERRIN
DEPUTY CITY CLERK

KARI J. CHADWICK
ADMINISTRATIVE CLERK

CITY COUNCIL

JOHN BECKMAN, Mayor
SUSAN HITCHCOCK,
Mayor Pro Tempore
LARRY D. HANSEN
BOB JOHNSON
JOANNEMOUNCE

CITY OF LODI

CITY HALL, 221 WEST PINE STREET
P.O. BOX 3006
LODI, CALIFORNIA 95241-1910
(209) 333-6702
FAX (209) 333-6807
cityclrk@lodi.gov

February 3, 2005

BLAIR KING, City Manager
SUSAN J. BLACKSTON
City Clerk
O. STEPHEN SCHWABAUER
City Attorney



Interested Parties:

RE: Resolution supporting legislation amending the Americans with Disabilities Act to require notice prior to filing legal action

Please find enclosed a certified copy of Resolution No. 2005-23 supporting legislation amending the Americans with Disabilities Act to require notice prior to filing legal action, which was adopted by the Lodi City Council at its meeting of February 2, 2005.

Should you have any questions, please do not hesitate to contact our office or the City Attorney's Office at (209) 333-6701.

Sincerely,

A handwritten signature in black ink, appearing to read "Susan J. Blackston". The signature is fluid and cursive.

Susan J. Blackston
City Clerk

SJB/JMP

Enclosure

cc: City Attorney
Community Development

RESOLUTION NO. 2005-23

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LEGISLATION AMENDING THE AMERICANS WITH
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Dated: February 2, 2005

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AYES: COUNCIL MEMBERS – Hansen, Hitchcock, Johnson, Mounce, and
Mayor Beckman

NOES: COUNCIL MEMBERS – None

ABSENT: COUNCIL MEMBERS – None

ABSTAIN: COUNCIL MEMBERS – None



SUSAN J. BLACKSTON
City Clerk

**RESOLUTION SUPPORTING LEGISLATION AMENDING THE AMERICANS WITH
DISABILITIES ACT TO REQUIRE NOTICE PRIOR TO FILING LEGAL ACTION**

MAILING LIST

League of California Cities
1400 K Street, Suite 400
Sacramento, CA 95814

Charles Poochigian
California State Senator
4974 E. Clinton, Suite 100
Fresno, CA 93727

Governor Arnold Schwarzenegger
State Capitol Building
Sacramento, CA 95814

Greg Aghazarian
California State Assemblyman
4557 Quail Lakes, Suite C-3
Stockton, CA 95207

Assemblyman Tim Leslie
State Capitol
Room 4164
Sacramento, CA 94249-0004

Alan Nakanishi
California State Assemblyman
218 W. Pine Street
Lodi, CA 95240

Robert Schultz, City Attorney
City of Morro Bay
955 Shasta Avenue
Morro Bay, CA 93442

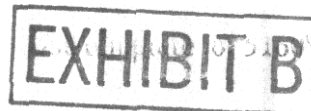
Richard Pombo
U.S. Congressman
2495 W. March Lane, Suite 104
Stockton, CA 95207

Barbara Boxer
U.S. Senator
112 Hart
Senate Office Building
Washington, D.C. 20510

Steve Schwabauer
City Attorney
City of Lodi

Dianne Feinstein
U.S. Senator
331 Hart
Senate Office Building
Washington, D.C. 20510

Konradt (Rad) Bartlam
Community Development Director
City of Lodi



Mr. Thomas N. Hallinan, City Attorney
Cities of Oakdale and Riverbank
P. O. Box 486
Oakdale, California 95361

Mr. Gregory Diaz, City Attorney
City of Merced
676 West 18th Street
Merced, California 95340

Mr. William Gnass, City Attorney
City of Waterford
700 Loughborough Drive, #D
Merced, California 95348

Mr. Salvador Navarrete, Esq.
City of Atwater
Allen, Polgar, Proietti & Fagalde
1640 N St., #200, P.O. Box 2184
Merced, California 95340-4657

Mr. Richard Nosky, City Attorney
City of Stockton
425 N. El Dorado Street
Stockton, California 95202

Mr. Kevin F. Kelley, Int. City Attorney
City of Gustine, c/o Berliner, Cohen
723 W. 19th Street
Merced, California 95340

Mr. John Brinton, City Attorney
City of Manteca
c/o McFall, Burnett & Brinton
165 St. Dominics Drive, #202
Manteca, California 95376-7800

Mr. Thomas P. Hallinan, City Attorney
Mr. Randy Risner, Partner
Cities of Newman and Livingston
P. O. Box 486
Oakdale, California 95361

Mr. Michael Lyons, City Attorney
City of Ceres
c/o Rushing, Lyons & Anderson
125 McHenry Avenue
Modesto, California 95354-0451

Neumiller & Beardslee
City Attorneys for City of Hughson
Attn: John Stovall/DeeAnne Watkins
P. O. Box 20
Stockton, California 95201-3020

Mr. Bill Vaughn, City Attorney
City of Los Banos
525 J Street, Suite A
Los Banos, California 93635

Mr. Richard C. Burton, City Attorney
City of Turlock
156 South Broadway, Suite 240
Turlock, California 95380-5454

Mr. Michael Milich, City Attorney
City of Modesto
P. O. Box 642
Modesto, California 95353

Mr. George Logan, City Attorney
City of Patterson
2669 Alabama
Atwater, California 95301

Debra E. Corbett, City Attorney
City of Tracy
325 East Tenth Street
Tracy, California 95376

Mr. Tom Terpstra, City Attorney
City of Ripon
2291 W. March Lane, #B-100
Stockton, California 95207

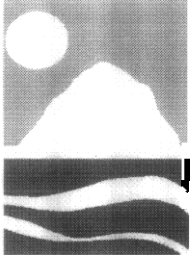
Mr. Richard Matranga, City Attorney
Cities of Sonora and Angels Camp
P. O. Box 242
Sonora, California 95370

Mr. Stephen Schwabauer, City Attorr
Mrs. Janice Magdich, Dep. City Attorr
City of Lodi
P. O. Box 3006
Lodi, California 95241

**RESOLUTION SUPPORTING LEGISLATION AMENDING THE AMERICANS WITH
DISABILITIES ACT TO REQUIRE NOTICE PRIOR TO FILING LEGAL ACTION**

MAILING LIST

NOTE: List provided by CA



City of Morro Bay

Morro Bay, CA 93442 • 805-772-6200

JAN 04 2004

CITY ATTORNEYS OFFICE

Steve S. -

Do council? - sue
w/ council? (JK)

Agg Place Agreement
1st mtg 1/7
for the February
CITY MANAGER'S OFFICE
JAN 04 2004

2/2/05
cc - 6 -
CP

December 21, 2004

Dixon Flynn

Lodi City Manager
P.O. Box 3006
Lodi, CA 95241-1910

Re: Request for support for legislation that would amend the Americans with Disabilities Act to require notice prior to filing a lawsuit.

Dear City Manager:

This correspondence is being sent to you at the direction of the City Council for the City of Morro Bay to solicit your support for legislation that would amend the Americans with Disabilities Act and California State Access laws to require notice prior to filing a lawsuit.

As you may know, the City of Morro Bay is located on the Pacific Coast of California about half way between San Francisco and Los Angeles near Hearst Castle and the Big Sur Coast. The City of Morro Bay is a working fishing village and the local fishing industry is one of the most important along the California Coast. The City is a pleasant tourist destination with shops, restaurants and hotels along the coastline and within several blocks of the primary streets. The Embarcadero, which runs along the waterfront, includes art galleries, tourist gift shops, surf and sport shops and dozens of restaurants. The City of Morro Bay has grown very little in the past 20 years, and as of 2000, there are 10,350 people residing in the City. There are absolutely no national chains in the City of Morro Bay except grocery stores and fast food chains. All of the shops and restaurants are locally owned and operated and are considered "Mom & Pop" shops.

In 2002, litigation was filed against the City for alleged violations of the Americans with Disabilities Act (ADA) and State Access laws. The City quickly settled a portion of the lawsuit by agreeing to spend \$75,000 on ADA improvements over the next five years. The City was unable to settle the portion of the lawsuit dealing with attorneys' fees as plaintiffs attorneys demanded approximately \$200,000. The Court recently reduced the amount of the attorneys' fees to \$54,000; however, plaintiffs attorney is appealing the decision.

In 2004, litigation was filed against 16 locally owned and operated restaurants in Morro Bay for alleged violations of ADA. All of the lawsuits are identical and have been filed by the same plaintiff and attorney. These lawsuits have had a tremendous impact on the Community. Two of

ADMINISTRATION
595 Harbor Street

CITY ATTORNEY
955 Shasta Avenue

FINANCE DEPARTMENT
595 Harbor Street

FIRE DEPARTMENT
715 Harbor Street

HARBOR DEPARTMENT
1275 Embarcadero Road

POLICE DEPARTMENT
870 Morro Bay Boulevard

PUBLIC SERVICES
955 Shasta Avenue

RECREATION & PARKS
1001 Kennedy Way

the restaurants have had to close their doors as they did not have the financial ability to fight the allegations.

The 14-year-old Americans with Disabilities Act is a good law. Unfortunately, the intent and spirit of the Americans with Disabilities Act of 1990 is being abused by a growing number of attorneys. Without giving small business owners an opportunity to remedy the alleged violations, these attorneys are filing lawsuits for minor technical access violations. Fearing the time, hassle and expense of lawsuits, small businesses are being forced into cash settlements – most of which goes to the attorneys. By creating a multitude of cases, these attorneys are generating substantial amounts of income for themselves at the expense of small businesses.

To help rectify this problem, Congressman Mark Foley (R-FL) introduced the *ADA Notification Act* (H. R. 728), which amends the Americans with Disabilities Act of 1990 to deny jurisdiction to a court in a civil action for remedies unless the complainant has implemented specified notification procedures that include opportunity for correction of the alleged violation.

At the State level, Assemblyman Tim Leslie (Tahoe City) has introduced similar legislation. AB 2594 *Public accommodations: persons with disabilities* would allow a person who hires an ADA specialist to review the design and construction of the person's premises to have a Certificate of ADA Compliance. Holders of such a certificate would be entitled to notice and the opportunity to correct future ADA violations before a civil lawsuit could be filed.

Congressman Foley's and Assemblyman Leslie's legislation would curtail the abusive practice of certain attorneys filing lawsuits for easily correctable ADA infractions and would enable small businesses to work with the disabled community to correct minor violations and improve accessibility for the disabled. In effect, passage of this legislation would tip the balance back to accessibility and back to the disabled and away from the lawyers.

Recently our City Council passed the enclosed resolution and directed Staff to notify other jurisdictions and solicit support in our endeavor to seek an amendment to the Americans with Disabilities Act to require notice prior to filing a lawsuit.

Thank you for your assistance.

Sincerely,

A handwritten signature in dark ink, appearing to read "Robert Schultz". The signature is written in a cursive, flowing style.

Robert Schultz
City Attorney

RESOLUTION NO. 68-04

RESOLUTION OF THE CITY COUNCIL OF THE
CITY OF MORRO BAY SUPPORTING LEGISLATION
AMENDING THE AMERICANS WITH DISABILITIES ACT
TO REQUIRE NOTICE PRIOR TO FILING LEGAL ACTION

THE CITY COUNCIL
City of Morro Bay, California

WHEREAS, the Americans with Disabilities Act gives civil rights protection to individuals with disabilities similar to those provided to individuals on the basis of race, color, sex, national origin, age, and religion; and

WHEREAS, the Americans with Disabilities Act guarantees equal opportunity for individuals with disabilities in public accommodations, employment, transportation, state and local government services, and telecommunications; and

WHEREAS, the City of Morro Bay supports the goals of this landmark civil rights law and the original intent of the Americans with Disabilities Act because it provides equal access opportunities for all Americans; and

WHEREAS, since the enactment of the Americans with Disabilities Act, many abuses have been perpetrated against property owners by a few unscrupulous attorneys seeking to wage economic retribution upon property owners using the guise of a well-intentioned civil rights law. Unfortunately, it is not the goal of these few attorneys to improve accessibility for the disabled, but to exact financial punishment through lawsuits; and


WHEREAS, legislation has been introduced by California State Assemblyman Tim Leslie (AB 2594) and by U.S. Congressman Mark Foley (H.R. 728) that would amend the Americans with Disabilities Act to require, as a precondition to commencing a civil action with respect to a place of public accommodation or commercial facility, that an opportunity be provided to correct alleged violations.

NOW, THEREFORE, BE IT RESOLVED BY THE COUNCIL OF THE CITY OF MORRO BAY that this Council supports the adoption of legislation that would require notice prior to filing legal action for violations of the Americans with Disabilities Act since it would curtail the abusive practice of certain attorneys by providing a due process provision for property owners so that they may be in full compliance with the Act.


BE IT FURTHER RESOLVED that upon passage, the City Clerk shall deliver this Resolution to the League of California Cities, Central Coast Cities, the Governor's office, and to the California and Federal Legislative Delegation.

PASSED AND ADOPTED by the City Council of the City of Morro Bay at a regular meeting thereof held on the 27th day of September, 2004 on the following vote:

AYES: Elliott, Peirce, Peters, Winholtz, Yates
NOES: None
ABSENT: None


WILLIAM YATES, Mayor

ATTEST


BRIDGETT BAUER, City Clerk